

REMARKS

Claim 25 has been amended by incorporating subject matter of claim 26 into it, by requiring an oily phase of 10-40% (support for which exists, *inter alia*, at page 6, lines 13-18 and claim 35), and by requiring the nanoemulsion to be an oil-in water nanoemulsion (support for which exists, *inter alia*, in the examples).

Claims 26 and 35 have been canceled.

Claims 25, 27-34 and 36-53 are currently pending, although claims 44-53 have been withdrawn from consideration. Applicants intend to seek rejoinder of the withdrawn claims as appropriate pursuant to MPEP § 821.04 upon indication of allowable subject matter.

The Office Action rejected claims 25-43 under 35 U.S.C. § 103 as obvious over U.S. patent 5,753,241 (“Ribier I”) in view of U.S. patent 5,130,122 (“Tabibi”) and further in view of U.S. patent 6,117,415 (“Schwarz”) or U.S. patent 5,266,321 (“Shukuzaki”) or U.S patent 5,412,004 (“Tachibana”) as evidenced by U.S. patent 6,153,569 (“Halloran”). In view of the following supplemental comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

The Office Action recognized that Ribier I does not teach nanoemulsions containing the required surfactants or nanoemulsions having the required turbidity. (Office Action, page 3).

Tabibi contains a general reference to “surfactants” but does not contain a specific disclosure of the required surfactants as recognized at page 4 of the Office Action.

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Schwarz discloses a toothpaste which cannot satisfy the turbidity requirement set forth in claim 25. Further, Schwarz teaches away from compositions having 10-40% oily phase, stating that compositions having 10-20% oil have particle size of 250-350 nm (col. 3, lines 25-28), so Schwarz does not teach or suggest the required particle size (100 nm or less) at the 10% oily phase level.

Shukuzaki relates to an oily composition, not an oil-in-water emulsion. The level of water in Shukuzaki is too low to suggest an oil-in-water nanoemulsion as required by the claimed invention.

Tachibana is cited as disclosing water-in-oil compositions, which is directly contrary to the required oil-in-water nanoemulsions.

Halloran merely relates to turbidity values, and does not relate to the invention compositions having the required ingredients in the required amounts.

None of the applied art teaches or suggests adding the required solid surfactants to oil-in-water nanoemulsions having 10-40% oily phase comprising at least one oil having a molecular weight of greater than 400 and a turbidity of 60-600 NTU. The Office Action recognized that Ribier I does not disclose the claimed surfactant. Similarly, the Office Action recognized (at page 4) that Tabibi neither teaches nor suggests the required solid surfactants. Finally, Schwarz and Shukuzaki neither teach nor suggest using the required surfactants to yield the invention oil-in-water nanoemulsions having the required turbidity. Clearly, the combination of these references cannot yield the claimed nanoemulsions.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

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Even assuming that a *prima facie* case of obviousness has been set forth -- which as explained above is not the case -- sufficient evidence of unexpected results exists to overcome this rejection, and the rejection should be withdrawn for this reason as well.

More specifically, the previously-submitted Rule 132 declaration demonstrates that Comparative Composition A containing a liquid sugar surfactant was unstable after 1 month increased turbidity, particularly at increased temperatures. Also, after 2 months, the composition was completely unstable, making turbidity measurements impossible.

In stark contrast, Invention Compositions B and C containing solid sugar surfactant were stable, even after 2 months, and these compositions had low and stable turbidity characteristics, even at increased temperatures.

This vast difference in physical properties among Comparative Composition A and Invention Compositions B and C was surprising and unexpected given the similarity of the compositions (the only noticeable difference being the use of a solid sugar surfactant as opposed to a liquid sugar surfactant).

Thus, the benefits associated with the claimed invention requiring the presence of a solid sugar surfactant are unexpected and surprising, and could not have been suggested by the remaining applied art. In other words, one of ordinary skill in the art, seeking to produce a nanoemulsion, would not have been motivated to use a solid sugar surfactant in the nanoemulsion with the expectation or belief that a stable, unturbid nanoemulsion would result -- such results were surprising and unexpected. Accordingly, the claimed invention cannot be obvious over the applied art.

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For all of the above reasons as well as the reasons set forth in their November 2008 response, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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